IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

MFA.No. 801 of 2001()

OPMV.860/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
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APPELLANT - PETITIONER:

C.K. HAMSA, S/O. KUNJIMOIDEEN,
AGED 28 YEARS, CHUNKATH HOUSE,
KALLADIPATTA P.O., OTTAPPALAM,
PALAKKAD DISTRICT.

BY ADV. SRI.ESM.KABEER

RESPONDENTS - RESPONDENTS:
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1. SAIDALI ALIAS SAIDALIPPU,
S/O. SIDDIK, AGED 26 YEARS, VARAMANGALATH
HOUSE, KUNDOORKARA POST, PARAPPURAM,
OTTAPPALAM TALUK, PALAKKAD DISTRICT
(DRIVER OF KL-10/D-9657 PICK UP VAN).

2. SUNDARAN, S/O. VELAYUDHAN, AGE NOT KNOWN,
THAMARAKUNNATH HOUSE, MUSLIYARANGADI,
NEDIYIRUPPU, MALAPPUAM DISTRICT
(OWNER OF KL-10/D-9657 PICK UP VAN).

3. THE ORIENTAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE, PRAMOD BUILDING,
IIND FLOOR, CHEROOTTY ROAD, CALICUT
(INSURER OF KL-10/D-9657 PICK UP VAN
POLICY NO.1988/1428 UPTO 25.6.1998.

BY ADV. SRI.P.G.PARAMESWARA PANICKER
SRI.SANTHEEP ANKARATH
SRI.M.JACOB MURICKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 801 OF 2001

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Dated this the 20th day of November, 2007

J U D G M E N T

Petitioner in O.P(MV) No.860 of 1998 on the file of the Motor Accidents Claims Tribunal, Ottappalam, is the appellant. Appeal is filed against the award passed by the Tribunal dismissing the claim petition filed by the petitioner. Petitioner, who is an Autorikshaw driver, sustained injuries on 12.5.1998. He was driving the vehicle through the Karakkad - Ongallur public road. When the vehicle reached near the place of accident it hit on the rear side of a pick up van bearing Reg. No.KL-10/D-9657, driven by the first respondent. Petitioner averred that the driver of the pick up van abruptly stopped that vehicle and hence he did not get time to stop his vehicle and the vehicle hit on the rear side of the pick up van and he sustained injuries. He claimed a compensation of Rs.1,00,000/-. It was averred that the accident occurred due to the negligence of the fist respondent. Petitioner gave evidence as P.W.1 and Exhibits A1 to A7 proved and marked. Insurer alone contested the case. Negligence alleged was

denied. Quantum of compensation claimed was also disputed.

2. Tribunal found that the petitioner sustained injuries and he is entitled to a compensation of Rs.26,167/-. But the Tribunal dismissed the O.P. on the ground that the accident occurred due to the negligence of the petitioner alone. Challenging that award, petitioner himself had filed this appeal.

3. Learned counsel appearing for the appellant has argued that the finding of the Tribunal that the accident occurred due the negligence of the appellant is illegal. It is argued that the quantum of compensation fixed is too low.

4. On a perusal of the records, it is seen that both the vehicles were proceeding on the same direction. The pick up van driven by the first respondent was proceeding in front of the vehicle driven by the appellant. The case put forward by the appellant is that the first respondent suddenly stopped the vehicle without showing any signal and on account of the same he did not get time to stop his vehicle and hence the accident occurred.

5. Tribunal rejected the claim of the appellant for two

reasons. Firstly it was held that there is no tyre marks at the place of accident and secondly the damages sustained to the vehicle of the appellant was on its left front side. It is true that there is no material on record to show that there was any tyre marks. But that alone is not a ground to hold that there was no negligence on the part of the first respondent. Both the vehicles were proceeding on the same direction. Damages sustained by the Autorikshaw show that the front portion of the vehicle sustained substantial damages. It was not on the front left portion alone. Material on record shows that Autorikshaw's front shield dented, front running bonnet twisted towards back and front handle dislocated. Records produced by the appellant shows that a criminal case was registered against the driver of the pick up van and after investigation final report was filed against him. In the oral evidence also appellant gave evidence to the effect that the driver of the pick up van suddenly stopped the vehicle. So the finding of the Tribunal that there was no negligence on the part of the driver of the pick up van is unsustainable. But at the same time, the appellant should have taken care to get his

vehicle stopped timely. Nature of damages sustained by the Autorikshaw shows that the vehicle was following just on the rear side of the pick up van. So the appellant had also equally contributed negligence. I fix the negligence of the appellant at 50%. Regarding the quantum of compensation fixed by the Tribunal, I do not find any reason to interfere with the same. The appellant is entitled to get 50% of the compensation awarded by the Tribunal with 6% interest.

In the result, appeal is allowed in part. An award is passed in favour of the appellant allowing him to recover a sum of Rs.13,083.50 which is rounded to Rs.13,100/-, which will carry interest at the rate of 6% per annum from the date of petition till date of realisation. The third respondent Insurer is directed to deposit the said amount. On deposit, the appellant can withdraw the entire amount.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. 801 OF 2001

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J U D G M E N T

20TH NOVEMBER, 2007